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TESTIMONY OF GAY & LESBIAN ADVOCATES & DEFENDERS IN SUPPORT OF RAISED BILL NO. 899

Gay & Lesbian Advocates & Defenders (GLAD) strongly urges this Committee to vote in favor of Raised Bill No. 899. This bill conforms Connecticut's statutes to the Supreme Court's decision in *Kerrigan v. Commissioner of Public Health,* 289 Conn. 135 (2008), and affirms the equal treatment of same-sex couples.

The *Kerrigan* decision ruled that it is unconstitutional to exclude same-sex couples from marriage. In so doing, *Kerrigan* discussed in great detail the long history of unjustified discrimination against lesbians and gay men in our law and society. *Kerrigan* also established that the state can no longer single out lesbian and gay people for different treatment nor pass a law with no purpose other than to express disapproval of a same-sex sexual orientation. In short, after *Kerrigan*, our laws and institutions must be neutral as to sexual orientation.

This bill affirms the equal treatment under the law required by *Kerrigan.* In addition to conforming the state's marriage statutes to *Kerrigan*, this bill (at Section One) codifies the common law of Connecticut by clarifying and ensuring that Connecticut will recognize marriages and other legal relationships (such as civil unions) validly entered into in another state. It is a well established legal principle that a person has the right to enforce in Connecticut legal rights arising under the laws of another state unless the laws of the other state contravene Connecticut's public policy or positive law. *See, e.g., Adamsen v. Adamsen*, 151 Conn. 172, 176 (1963). In spite of this clear law, some courts

in Connecticut (before passage of the civil union law) and other states have not applied this principle neutrally or equally to people who have entered into civil unions (or other similar relationships) in another state. This bill ensures that equal treatment by removing any potential confusion as to the validity of these legal relationships in Connecticut. This provision will assist Connecticut residents who entered into a civil union in another state, such as Vermont, as well people who travel or move to Connecticut. In addition, this bill will eliminate wasteful litigation disputes over these issues, thus conserving judicial resources and furthering efficiency in the courts.

While the *Kerrigan* decision mandates that Connecticut treat its lesbian and gay citizens equally, Connecticut cannot, of course, eradicate discrimination by other states. Section Two of this bill, however, encourages other states to respect all valid Connecticut marriages. This provision does everything the state can possibly do by sending a strong signal to other states about Connecticut's commitment to the fair and equal treatment of its citizens.

This bill (at Section Seven) also ensures that clergy may choose not to solemnize certain marriages consistent with their rights under the free exercise provisions of the state and federal constitutions. It is also important, however, to clarify another issue related to persons authorized to solemnize marriages which, though not addressed in this bill, may be the subject of testimony to the Committee. Justices of the peace and others authorized by law to solemnize marriages are state actors. Justices of the peace are given their authority by the state and have no power until a town clerk issues a certificate of authority. *See* Conn. Gen. Stat. Ann, § 7-33a. Their duties – e.g., solemnizing marriages, administering oaths, taking depositions – are state functions. Because justices of the

peace are state actors, a bill granting them a religious exemption from performing their state duties would be unconstitutional. In an opinion dated October 28, 2008, Attorney General Blumenthal stated that "public officials who have been authorized to perform marriages may not refuse to perform a marriage for discriminatory reasons in violation of the Connecticut Constitution."

The obligations of a justice of the peace to perform state duties in a nondiscriminatory manner is not new, as demonstrated by a 1983 opinion of the Texas Attorney General that the refusal of a justice of the peace to marry an interracial couple violates equal protection. *See* Office of the Attorney General, State of Texas, Opinion No. JM-1, March 8, 1983. The Attorney General concluded that "there can be no doubt that when a justice of the peace performs a marriage ceremony, he is acting in the name and under the authority, of the State of Texas. And he is thereby engaging in 'state action.'" The constitutional guarantee of equal protection extends to all official state actions. The Texas Attorney General reasoned that since the U.S. Supreme Court had made it clear in *Loving v. Virginia* that a state violated equal protection when it refused to marry people on racial grounds, a justice of the peace similarly may not refuse to exercise his or her state authority to marry people on racial grounds. In Connecticut, in light of the *Kerrigan* decision finding it an equal protection violation to exclude same-sex couples from marriage, the same principle applies, preventing justices of the peace from discriminating against same-sex couples.

In keeping with *Kerrigan's* ruling that the state may not discriminate against or disfavor lesbian and gay people, this bill (at Section 17) removes provisions in the 1991 Gay Rights Law that the Supreme Court stated have no purpose other than to express

antigay bias and disapproval of same-sex relationships. Conn. Gen. Stat. Section 46a-81r added a provision to the sexual orientation nondiscrimination law which states that nothing in that law "shall be deemed or construed (1) to mean the State of Connecticut condones homosexuality or bisexuality or any equivalent lifestyle, (2) to authorize the promotion of homosexuality or bisexuality in education institutions or require the teaching in educational institutions of homosexuality or bisexuality as an acceptable lifestyle, (3) to authorize or permit the use of numerical goals or quotas, or other types of affirmative action programs, with respect to homosexuality or bisexuality in the admission or enforcement of the nondiscrimination law ... (4) to authorize the recognition of or the right of marriage between persons of the same sex, or (5) to establish sexual orientation as a specific and separate cultural classification in society."

In fact, the nondiscrimination law did not authorize any of these things. To the contrary, its only purpose was to demean and stigmatize gay and lesbian people. The *Kerrigan* decision directly addresses this provision in Connecticut law and characterized it as follows:

> By singling out same sex relationships in this manner- there is, of course, no such statutory disclaimer for opposite sex relationships – the legislature effectively has proclaimed, as a matter of state policy, that same sex relationships are disfavored. That policy, which is unprecedented among the various antidiscrimination measures enacted in this state, represents a kind of state-sponsored disapproval of same sex relationships and consequently serves to undermine the legitimacy of homosexual relationships and perpetuate feelings of personal inferiority and inadequacy among gay persons, and to diminish the effect of laws barring discrimination against gay persons. Indeed, the purposeful description of homosexuality as a "lifestyle" not condoned by the state stigmatizes gay persons and equates their identity with conduct disfavored by the state

Kerrigan, 289 Conn. at 205-206. Conn. Gen. Stat. Section 46a-81r undermines the important efforts to advance equality by this legislature and the State of Connecticut. It is an official stamp of discrimination which this legislature should remove.

Some people may incorrectly testify before this Committee that the removal of this language will mandate that schools "promote" homosexuality in the schools. This is simply a scare tactic. Nothing could be further from the truth.

In reality, Section 46a-81r never prevented schools from including curricula materials that discuss lesbian and gay people or same-sex relationships in a positive light. Nor will removing this language require schools to include any particular material in curricula. The sole effect of Section 46a-81r was to stigmatize lesbian and gay people, as *Kerrigan* noted. The law about school curricula is that local school districts have always had broad discretion to make the decisions about what subjects to teach and how they should be taught. This was true after Section 46a-81r was passed and it will be true after it is repealed. Decisions to teach or not to teach particular material will, as always, remain with educators and local school administrators.

Finally, this bill (at Sections 11 and 12) provides for a smooth and orderly transition from a legal system of civil unions for gay people and marriage for heterosexual people to a system in which there is one legal system for all citizens. This is important for two reasons. First, in our legal system, equality requires that all citizens be treated equally. We do not and should not have different statuses for different citizens. Civil unions, while an historic step forward, created a second class status solely for gay and lesbian citizens. Second, the existence of two systems for same-sex couples has created confusion for some people (e.g., whether they can get married if they have a civil

union; what is the effect of having both). This bill removes that confusion and creates one system, marriage, for all citizens.

For these reasons, Gay & Lesbian Advocates & Defenders strongly urges this Committee to vote in favor of Raised Bill No. 899.